

Assistance & Investigations Manual

CHAPTER 2 - NATURE AND PURPOSE OF IG INVESTIGATIONS

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0201 **DEFINITION:** SECNAVINST 5430.57G (Mission and Functions of the Naval Inspector General) defines an investigation as "any form of examination into specific allegations of wrongdoing or misconduct." An IG investigation is one form of an IG "inquiry." The difference between an IG investigation and other forms of IG inquiries is that, from the outset, an investigation focuses on specific allegations(s) of wrongdoing or misconduct against an individual or individuals.

0202 **POLICY FOR CONDUCT OF IG INVESTIGATIONS:** SECNAVINST 5430.57G sets forth the general policy for the conduct of all IG functions, including investigations. It states:

The DON shall strive to maintain the highest level of readiness, effectiveness, discipline, efficiency, integrity, and public confidence. Candid, objective, and uninhibited internal analysis of the management, operation, and administration of DON is essential to achieve this objective. *All inquiries into matters affecting the integrity, efficiency, discipline and readiness of the DON shall be conducted in an independent and professional manner, without command influence, pressure, or fear of reprisal from any level within DON. All non-frivolous allegations of misconduct shall be thoroughly and impartially investigated and reported.* (emphasis added)

0203 **PURPOSE OF IG INVESTIGATIONS:** The purpose of an IG investigation is to obtain facts sufficient to enable the responsible authority to (1) determine whether allegations are substantiated and (2) decide what action, if any, should be taken in response to substantiated allegations. Conceptually, responsive action may be divided into three broad categories:

a. Corrective Action - Corrective action includes those steps taken to fix "systemic" problems or to minimize the likelihood wrongdoing or other undesirable events will reoccur. Examples of corrective action include establishing, changing, or augmenting procedures, training, and implementing checks and balances. Inspections, audits, or reviews may be used to identify effective ways to address problems identified during investigations. Responsible authorities may decide to take corrective action even when the allegations can not be substantiated.

b. Remedial Action - In some cases, the IG investigation reveals that wrongdoing or system deficiencies adversely affected the complainant or others. Although redress of wrongs is not, by itself, sufficient reason to initiate an IG investigation when other remedies are available, basic fairness requires that individuals harmed by improper conduct or unintended consequences of "the system" be restored to their prior circumstances whenever possible. Such action is an important element of the responsible authority's response to an IG investigation. Responsible authorities may decide to take remedial action even when allegations of wrongdoing can not be substantiated.

c. Administrative or Disciplinary Action - Administrative action may include such actions as: training, counseling, reassignment, performance or fitness report marks or comments, reduction in grade, administrative separation, or removal or dismissal. In the context of an IG investigation, disciplinary action is any action covered by the UCMJ: such as, nonjudicial punishment or courts-martial. Although outsiders may think administrative or disciplinary action by the responsible authority is the primary purpose of IG investigations, corrective and remedial actions are actually more important to accomplishment of the IG mission. In some cases, other considerations may dictate that no (or limited) action should be taken in response to substantiated misconduct. For example, to protect the integrity of the IG system, it may be necessary to forego disciplinary action in an unusual case to protect the identity of a complainant or other confidential source.

0204 AUTHORITY FOR IG INVESTIGATIONS: The authority for IG investigations is derived from statute and regulation:

a. Statute - 10 USC 5020 sets forth the statutory basis for NAVINSGEN investigations. It authorizes NAVINSGEN to investigate matters affecting DON discipline or military efficiency. There is no statutory basis for IG investigations performed by other DON IG organizations. NAVINSGEN's statutory authority is quite limited, especially when compared to that of the DoDIG.

b. Regulation

(1) SECNAV has given NAVINSGEN broad investigative authority in the US Navy Regulations, and such SECNAV Instructions as 5430.57G "Mission and Functions of the Naval Inspector General," 5430.92B, "Assignment of Responsibilities to Counteract Fraud, Waste, and Related Improprieties within the DON," 5370.5B, "DON Hotline Program," and 5800.12B, "Investigations of Allegations Against Senior Officials of the DON." SECNAVINST 5430.57G establishes the position of

Deputy Naval Inspector General for Marine Corps Matters/Inspector General of the Marine Corps (IGMC).

(2) Within the Marine Corps, MCO 5430.1 (IGP), MCO 5370.8 (Marine Corps Hotline Program), and this manual provide the IGMC and CIGs the authority and guidance to conduct IG investigations.

0205 **MATTERS APPROPRIATE FOR IG INVESTIGATION:** SECNAVINST 5430.57G, 5430.92B, and 5370.5B, and MCO 5430.1 and MCO 5370.8 describe those matters appropriate for investigation by Marine Corps IG organizations. In general, the following applies:

a. In broad terms, the mission of every Marine Corps IG organization is to inquire into matters that have some relationship to readiness, effectiveness, discipline, efficiency, integrity, ethics, and public confidence. Therefore, allegations that an individual's improper conduct has adversely affected readiness, etc., are proper subjects for IG investigations. Because the DON recognizes that improper conduct is likely to adversely affect one or more of these areas, it is DON policy that all non-frivolous allegations of improper conduct shall be thoroughly and impartially investigated and reported. Usually hotline complaints would be investigated by an IG organization. However, as discussed below, some allegations should be referred to others for investigation.

b. A CIG organization also may be tasked or requested to perform an investigation or inquiry into any matter that reasonably can be expected to be of interest to the SECNAV, CMC, NAVINSGEN, IGMC, or DoDIG. In most cases, the matter will be presented directly to the IGMC, which will either assume investigative jurisdiction or refer the matter to a MSC CIG. MSC CIG organizations should avoid investigations of matters whose relationship to the IG mission is uncertain, even if they are arguably of Secretarial/CMC level interest, without clear direction from IGMC or their Commands.

c. DON military and civilian personnel who fear reprisal may use a DoD, DON, IGMC, or CIG hotline to request IG investigations as an alternative to mechanisms available within normal chain of command channels. They also may request IG investigations when they believe the chain of command will not effectively address their concerns. They may use the hotline to lodge complaints and provide facts concerning: violations of law, rules, or regulations; fraud, waste or inefficiency; abuse of authority or other misconduct; and other matters that reasonably can be expected to be of Secretarial or CMC level interest. However, the hotline is a management tool; the hotline complainant has no right to demand the investigation of a matter. Nor is there a requirement that the IGP organization receiving a proper hotline complaint investigate the complaint itself; in appropriate cases, hotline complaints may be referred to others, within and outside the IG chain, for inquiry and action.

0206 **MATTERS INAPPROPRIATE FOR IG INVESTIGATION:** IGP organizations should refer investigations of certain types of allegations to other organizations. Examples include:

a. Major Crimes - The Naval Criminal Investigative Command (NCIS) has authority to investigate allegations that DON civilian or military personnel have committed major crimes. These are defined in SECNAVINST 5520.3B, "Criminal and Security Investigations," as offenses for which imprisonment for more than one year may be imposed under the UCMJ or federal, state, or local laws (such crimes often are referred to as felonies). Although IGP organizations are responsible for investigating standards of conduct violations, many of those standards are derived from federal felony statutes (see, for example, Office of Government Ethics regulations at 5 CFR 2635.401 through 503 for a discussion of conflicts of interest based on a criminal statute, 18 USC 208, and conflicts based on agency regulations). In those cases, NCIS should be apprised of the allegations before the IG office proceeds with the IG investigation. When NCIS has reason to believe the cognizant United States Attorney will not prosecute a case, it may decline jurisdiction and the IG investigation may go forward. When a matter appropriate for an IG investigation must be referred to NCIS for investigation pursuant to SECNAVINST 5520.3B, the IGP organization should log the case into its tracking system and monitor the progress of the NCIS investigation. Should the NCIS investigation fail to establish a basis for criminal prosecution, NCIS may return the case to the IGP organization for such further investigation as may be necessary to permit responsible authorities to determine whether other action is appropriate.

b. Crimes Committed By Military Personnel - A complaint or request for an IG inquiry may include information that suggests a military member may have committed an offense punishable under the UCMJ. **When the UCMJ violation would also constitute the commission of a major crime within the jurisdiction of NCIS, the matter must be referred to NCIS for investigation.** In less serious cases, or after NCIS declines to investigate, the IGP organization should next consider whether to refer the allegation to the alleged violator's commander for inquiry and action. A referral is appropriate when the allegation is not one that would normally be the subject of an IG investigation. When a matter appropriate for an IG investigation could constitute an offense punishable under the UCMJ, close coordination with the Staff Judge Advocate for the appropriate convening authority is necessary to ensure the investigation meets the requirements of the UCMJ. The alleged conflict of interest violation mentioned in paragraph 0206.1 is a good example, because a violation of 18 USC 208 is also a violation of the UCMJ; even if the US Attorney declines to prosecute, the cognizant convening authority may decide to refer the matter to a court martial. Unless and until the convening authority decides a court martial would not be appropriate for the offense, the investigators should coordinate their actions with the Staff JA to ensure evidence obtained during the IG investigation may be used in the court martial proceedings. For example, as discussed in paragraph 0321, the confession of a military member suspect obtained in the absence of an Article 31(b), UCMJ warning is not admissible in a court-martial.

c. Adverse Actions - DON personnel often seek IG assistance when faced with adverse action for which another, more specific remedy or means of redress is available. For example, many adverse personnel actions taken against civilians are appealable to Merit Systems Protection Board (MSPB) or subject to resolution through agency grievance procedures. Non-judicial punishments and courts-martial actions under the UCMJ are appealable to higher military authority. In

such cases, the complainant should be referred to the appropriate authority to resolve the matter, unless there is an allegation of reprisal for a protected activity such as whistleblowing.

d. Discrimination Cases - Complaints of discrimination/sexual harassment, whether made by civilian or military personnel, should be addressed through their respective complaint resolution processes rather than by an IG investigation. However, sexual assault is a criminal matter and should be referred to NCIS. When allegations of discrimination/sexual harassment are mixed with other allegations appropriate for IG inquiry, it is appropriate to tell the complainant which matters the IG organization will investigate, and which should be taken to the command's discrimination complaint resolution process. When the allegations are so intertwined as to make separation inefficient, consultation with discrimination investigative personnel is appropriate to decide how to proceed. See also Chapter 11.

e. Correction Of Fitness Reports - The Board for Correction of Naval Records (BCNR) is the appropriate authority to review allegations of improper fitness reports and other requests for correction of records. However, allegations of reprisal for whistleblowing should be investigated by the IG organization. See also Chapter 10.

f. Chain Of Command Action - Many complaints and requests for assistance are best handled by the chain of command. For example, complaints of wrongs to individual military personnel may be handled through Article 138, UCMJ or Article 1150, US Navy Regulations proceedings, and military personnel making requests or complaints cognizable under those articles should be encouraged to use them (however, since both articles are intended to redress alleged wrongdoing, the IG organization may not refuse to accept a matter for investigation simply because it could also be addressed under one of these articles). Allegations that, on their face, would constitute only inappropriate conduct are also examples of matters that often may be referred for command inquiry. However, IG organizations should be sensitive to complaints or requests that indicate systemic problems may exist that should be addressed through an IG investigation or inspection. When a matter is referred to a command, it is appropriate to request notification of the action, if any, that is taken.

g. Redress Of Wrongs - The fact that an individual believes he or she has been "wronged" by the "system" is not itself sufficient to justify an IG investigation. IGP IGs are not ombudsmen or advocates for complainants. Nor are they a substitute for the Marine Corps chain of command dispute resolution mechanisms, and they should not be used for that purpose unless there is evidence those systems are nonresponsive. Complaints from individuals seeking relief from adverse personnel or disciplinary actions, unfavorable findings in discrimination cases, or other matters for which a statute or regulation sets forth a resolution process, should be accepted for IG investigation only when coupled with a non-frivolous allegation that the chain of command is unable or unwilling to address the matter fairly and impartially for reasons related to conflicts of interest or personal impropriety, such as reprisal for whistleblowing, cooperating with an investigation, or the exercise of an appeal right.

h. Organizations Outside the Marine Corps - Some violations of law or regulations must be investigated by specific organizations outside of the Marine Corps. For example, allegations of Hatch Act violations must be referred to the Office of Special Counsel (OSC). The Department of Labor is responsible for investigation of many matters relating to wages and hours of work. Some outside organizations have special or unique powers to assist DON personnel. For example, the OSC can seek a stay of a pending personnel action it believes is based on a prohibited personnel practice. Complainants should be advised of these special circumstances so they may make an informed choice among the investigative organizations authorized to address their concerns. When an outside organization such as the OSC initiates an investigation into a matter that is already the subject of an IG investigation, it may be necessary or appropriate to suspend the IG investigation pending the outcome of the OSC investigation.

0207 SOURCES OF REQUESTS FOR INVESTIGATIONS: IGP organizations receive requests for investigations from many different sources. In most cases, complaints, allegations of wrongdoing and requests for assistance require some degree of investigative effort before they can be answered, and therefore may be treated as requests for investigations. The manner in which these requests should be handled varies with the source of the request, which may include:

a. SECNAV or CMC - Clearly, 10 USC 5020 authorizes the SECNAV and CMC to "direct" IGMC to conduct investigations into matters that affect Marine Corps discipline or military efficiency. The CMC's authority is not explicitly set forth in 10 USC 5020, but is implied when read in conjunction with 10 USC 5042. The CMC's authority is clarified in SECNAVINST 5430.57G. SECNAV or CMC direction to conduct investigations should be provided in writing whenever possible, and documented with a letter to file in other cases. As in any tasking that comes directly from one authorized to act upon the results of an IG investigation, informal discussions may precede written direction in order to ensure there is a clear understanding of the scope, focus, and intended use of the investigation. Unless expressly directed otherwise, IGP organizations may augment their staff with other Marine Corps personnel to form an investigative team composed of subject matter experts, or direct the performance of the investigation by a subordinate organization within their command's jurisdiction. In such cases, however, IGP organization remains directly responsible for the quality of the investigative product. In rare cases, it may not be appropriate for an IGP organization to conduct an investigation because of the existence or appearance of a lack of impartiality. In those instances, coordinate with a higher headquarters IGP organization to transfer investigative jurisdiction.

b. Under and Assistant Secretaries - Although they have no express statutory or regulatory authority to initiate IG investigations, the Under Secretary and Assistant Secretaries occasionally task the IGMC to conduct investigations. As members of the Secretariat, their requests are deemed to be made on behalf of SECNAV and in most cases are handled in the same manner as requests made directly by SECNAV.

c. Commanders, Commanding Officers - The US Navy Regulations and the Marine Corps Manual make Commanders and Commanding Officers

responsible for the integrity and efficiency of their organizations. Marine Corps organizations commanded by a general officer have a CIG assigned to perform the IG mission. In general, MSC CIG organizations should, whenever practical, conduct IG investigations with trained investigators. Special care shall be taken to ensure there is no real or apparent lack of impartiality on the part of the investigating organization. When there is a real or apparent lack of impartiality, the investigation must be performed by the IG organization at a higher level in the chain of command. **Cases that may be of interest to senior DON leadership (SECNAV or CMC), Congress, or the public must be referred to the IGMC for decision as to who should conduct the investigation.**

d. Congress - There is no statute or regulation that provides for Congress to task Marine Corps IG organizations to perform IG investigations. Official requests, that is, those made on behalf of a Congressional committee, should be addressed to SECNAV. Official committee requests for investigations made directly to an IGP organization must be referred to IGMC for a Secretarial decision as to whether an investigation should be conducted and who should undertake it. The Office of Legislative Affairs (OLA) should be informed of the request, SECNAV decision, and final action. Many Congressmen write directly to IGP organizations with personal requests for themselves or, more often, constituents. These requests should be handled in the same manner as hotlines and requests by individuals. OLA should be advised of the request and final action.

e. DODIG - The DoDIG has the authority to conduct investigations into matters concerning the Marine Corps or to refer them to the IGMC for action. DoDIG involvement in investigations concerning Marine Corps and Navy personnel most often results from complaints made to the DoD hotline. The IGMC is the central point of contact for coordinating DoDIG investigations, and **DoDIG requests made directly to other IGP organizations must be coordinated with the IGMC before any action is taken.**

f. Hotlines - The DoD, Navy, Marine Corps, and local command hotlines are designed to strengthen and focus efforts to combat fraud, waste and mismanagement. SECNAVINST 5430.92B also requires all DON personnel to report suspected violations of standards of conduct applicable to DON personnel to such "proper authority" as the Navy or Marine Corps hotlines. The great majority of investigations conducted or directed by the IGP organizations originate with a call or letter to the DoD, Navy, Marine Corps, or local command hotline. The DoDIG refers most DoD hotline complaints that concern the Marine Corps to IGMC for action, reserving only those that it deems particularly sensitive or those which the public could perceive were inappropriate for the Marine Corps to investigate itself. The IGMC practice is to refer DoD, Navy, and Marine Corps hotline complaints to the Commander of the cognizant Marine Corps MSC organization. From there, the complaint is usually referred for investigation to the lowest level that can accomplish the investigation without losing, or appearing to lose, impartiality or independence (however, Chapter 10 discusses new rules imposed by 10 USC 1034 for military whistleblower reprisal investigations). Many Marine Corps organizations have established their own hotlines. In general, the person or office performing the IG function for that organization handles the hotline complaints. Care should be taken to refer to the

next higher level those complaints that are inappropriate for investigation at the receiving level because of a real or apparent conflict of interest or other basis for a lack of impartiality. Refer complaints that may be of interest to senior Marine Corps leadership, Congress or the public to the IGMC before proceeding with the investigation.

g. Individuals - Many requests for investigations come from individuals who believe they have been wronged during the course of their exercise of a chain of command redress procedure. These requests often take the form of a hotline complaint in which it is alleged that the redress procedure produced the wrong result. Unlike a true hotline complaint, however, the allegation of "wrongdoing" does not focus on fraud, waste, mismanagement or standards of conduct violation, although the complaint may contain some allegations of wrongdoing. Ensuring that Marine Corps personnel are treated fairly and in accordance with applicable law and regulation does promote efficiency within the Marine Corps. However, the mission of IGP organizations does not include assistance in the correction of wrongs in individual cases absent special circumstances such as reprisal or systemic problems. Because IGP organizations are not advocates for individuals, complaints about actions personal to individuals should be carefully screened for referral to other Marine Corps organizations that are a more appropriate forum. In such cases, every reasonable effort should be made to direct individuals to the proper organization to address their concerns. When an individual's complaint of wrong is a proper subject for IG investigation and the wrong has been substantiated, it is appropriate for an IG organization to include recommendations for the command to consider remedial actions to make the complainant "whole."

0208 STANDARDS FOR CONDUCT OF IG INVESTIGATIONS: IG investigations shall be performed in an independent, complete, and timely manner. Where appropriate, they shall provide sufficient information to permit responsible authorities to hold subordinates accountable (accountability) for their actions and to correct systemic faults.

a. Independence - This standard requires that the individual and organization performing an IG investigation be free, in fact and appearance, from any impairment of objectivity and impartiality. On occasion, every investigator may experience difficulty in remaining objective and impartial due to official, professional, personal, or financial relationships that may affect the extent of the investigation, limit disclosure of information, or otherwise weaken the investigation. Every investigator also carries pre-conceived opinions or biases that relate directly or indirectly to particular individuals, groups or organizations. Investigators should be sensitive to inherent prejudices that may affect their work, and discuss them with their supervisors before undertaking an investigation. Investigators must also consider appearance issues. For example, if an investigator served with the subject in a recent previous assignment, or is scheduled to transfer into the subject's command, there may be the appearance of bias even though none actually exists. When there is a reasonable likelihood the integrity of the investigation may be compromised by the real or apparent bias of the investigator, the investigation should be assigned to someone else.

(1) External factors may also impede the ability of an individual to conduct an independent, objective investigation. These may include interference in the assignment of cases or personnel, and restrictions on funds or other resources available for investigation may adversely affect objectivity. The authority to overrule or to influence the extent and thoroughness of the investigation and the content of the investigative report or denial of access to sources of information also impacts directly on the independence of the investigation. CIG organizations faced with such impediments shall report them to IGMC through the IG chain of command.

(2) Lack of independence also may be attributed to the position of the IG organization. Since complete assurance of impartiality and objectivity is necessary, allegations must be examined by officials outside and independent of the operation specified in the complaint. The preferred way to ensure this separation is to have an organization at least one level above the subject command conduct the investigation. In many cases, however, due to the size or remoteness of the organization, this is unnecessary or impractical. For example, the size of most MSC headquarters organizations reduces the likelihood of bias in individual cases. At isolated commands, it may be too costly or time-consuming to send an investigator from a higher level organization to investigate allegations of a less serious nature. In general, when the matter under investigation relates solely to a discrete unit within the subject command, and there is no indication that the commanding officer or other key management officials were aware of or in some manner directly responsible for the alleged impropriety, the IG office within the subject command may investigate the matter. Conversely, an allegation against a commanding officer or other senior management official within the subject command should not be investigated by that command's IG office. As noted in paragraph 0207.6, refer to Chapter 10 for special requirements imposed by 10 USC 1034 for the conduct of military whistleblower reprisal investigations.

(3) Lack of independence may also result from the position, rank, or grade of the investigator. Within a command, the head of the IG organization should report directly to the commanding officer. The investigators assigned to the IG organization should not be assigned any duties that could be the source of bias or a loss of independence. When an IG organization is conducting an investigation of alleged misconduct within the command to which it is assigned, the grade or rank of the senior person available to participate in the investigation should be equal to or higher than that of the senior subject. Inability to comply with this practice is an indication that the investigation should be performed by a different IG organization. The senior person need not personally participate in every aspect of the investigation, but should be available when needed. For example, if there is reason to believe the subject may attempt to intimidate a lower ranking investigator during a subject interview, the senior person could attend the interview.

b. Completeness - An investigation must be complete before it can be closed. To be complete, it must be thorough. Thoroughness is reflected by the report of investigation, and the documentation in the case file. A thorough investigative report addresses all relevant aspects of the investigation. It relates the results of the

investigation clearly and concisely. Facts must be presented in a logical, direct manner so as to facilitate reader comprehension. The report must be logically organized, accurate, clear and concise, and make sense. It must not raise unanswered questions nor leave matters open to question or misinterpretation. The report should be no longer than necessary to clearly and accurately communicate the relevant findings clearly and accurately. Systemic weaknesses or management problems disclosed during the investigation must be reported. Together, the investigative report and the case file must reflect the following:

(1) That all allegations in the basic complaint were addressed, and other allegations developed during the investigation were addressed or handed off for appropriate follow-up action.

(2) That all key individuals were interviewed by the investigator.

(3) That all relevant questions were asked by the investigator.

(4) That pertinent documents were created, collected, reviewed, and maintained by the investigator.

(5) That legal or technical expertise was obtained and documented when appropriate.

(6) That the investigator used common sense in conducting the investigation.

(7) That accountability actions have been taken.

(8) That recommendations are feasible and appropriate.

c. Timeliness - Investigations are to be initiated, conducted and completed in a timely manner. Command action and follow-up in response to the report must also be timely.

d. Accountability - Commanders, commanding officers, and supervisors have the duty to hold their subordinates accountable for their actions and to correct systemic faults. The IG investigation must provide them with the information necessary to discharge this responsibility effectively.